

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(IN THE DISTRICT REGISTRY OF BUKOBA)**

**AT BUKOBA**

**LAND CASE REVISION No. 10 OF 2019**

*(Arising from the District Court of Muleba at Muleba in Civil Appeal 123 of 1996 originated in Muleba Primary Court at Muhutwe in Civil Case No. 11 of 1994 & the District Land and Housing Tribunal for Muleba at Muleba in Misc. Application No. 108 of 2019 originated in Application No. 49 of 2019)*

**ESTONE ELIEZA ----- APPLICANT**

Versus

**NASON RUGEMALIRA ----- RESPONDENT**

**RULING**

08/03/2021 & 12/03/2021

**Mtulya, J.:**

On 13<sup>th</sup> June 1994 a land dispute was registered at **Muleba Primary Court** located in Muhutwe (the Primary Court) in **Civil Case No. 11 of 1994** between Nason Rugemalira (the Respondent) and Ms. Paskazia Joasi (Ms. Paskazia) which was decided in favour of Ms. Paskazia on 5<sup>th</sup> September 1996. The Respondent was not satisfied with the decision hence preferred an appeal in the **District Court of Muleba at Muleba** (the District Court) in **Civil Appeal 123 of 1996**.

The District Court after full hearing of the appeal, it learned that the land in dispute is a clan land belonged to Mr. Joasi Bampanja, who was husband to Ms. Paskazia and grandfather to the Respondent, it then rendered down a very wise decision. For

purpose of clarity, I will quote the wording of learned magistrate, W. Mashauri, DM, at page 3 of the Judgment delivered on 16<sup>th</sup> April 1997:

*Bi. Paskazia Joasi shall take possession of the house and shamba given to her for use until after her demise when the appellant shall then take possession of the same. No order is made as to costs.*

The decision and reasoning of the District Court were not disputed in any competent court or tribunal. The judgment remained on record for more than twenty (20) years. However, on 26<sup>th</sup> August 2019, a suit was preferred by Estone Elieza (the Applicant) in the **District Land and Housing Tribunal for Muleba at Muleba** (the Tribunal) in **Application No. 49 of 2019**, claiming ownership of the same land. The Applicant stated in paragraph 6 (ii) of the Tribunal's Land Application Form that he acquired the land through gift from his grandmother Paskazia Joasi. Subsequent to the initiation of the suit, the Applicant sometimes in early September 2019 had filed **Misc. Application No. 108 of 2019** in the Tribunal and prayed for an interim order to restrain the Respondent from using the land pending the hearing of the main **Application in Application No. 49**

**of 2019.** His prayer was granted on 12<sup>th</sup> September 2019 hence the Respondent was restrained from using the land.

Noting of the dispute and awaited interpretation of the law in the Tribunal, which may lead to conflicting decisions of courts or tribunals of the similar jurisdiction, this court *suo moto* invited both records of the Tribunal and District Court in order to inspect the record for purposes of satisfying itself on legality, correctness and propriety of the dual Applications filed in the Tribunal, namely, **Application in Application No. 49 of 2019** and **Misc. Application No. 108 of 2019.** The records were called under the authority of this court in section 43 (1) (b) of **the Land Disputes Courts Act** [Cap. 216 R.E. 2019] and sections 79 (1) & (3) and 95 of the **Civil Procedure Code** [Cap. 33 R.E. 2019].

As part of giving opportunity to the parties to exercise their right to be heard as per requirement of the law in article 13 (6) (a) of the **Constitution of the United Republic of Tanzania** [Cap. 2 R.E. 2002] and precedents in (see: **Mbeya Rukwa Auto Parts and Transport Limited v. Jestina George Mwakyoma**, Civil Appeal No. 45 of 2002 and **TANELEC Limited v. The Commissioner General, Tanzania Revenue Authority**, Civil Appeal No. 20 of 2018, this court

had invited the parties in two occasions, on 22<sup>nd</sup> February 2021 and 8<sup>th</sup> March 2021.

It is fortunate that the parties were very brief, but with different views of the matter. The Applicant had invited the legal services of Mr. Vincent Ngotorwa whereas the Respondent appeared in person without any legal representation. However, before he took the floor, Mr. Ngotorwa informed this court that the Applicant had already expired and administration of his estate is under Mr. Edwin Kato Elieza. With regard to the land in dispute, Mr. Ngotorwa briefly stated that the Applicant had stayed with Bibi Paskazia from 2002 to 2018 during the time of her sickness and hence Bibi Paskazia drafted a Will in favour of the Applicant sometimes in 2012.

On his part, the Respondent reiterated that he was already declared a rightful owner of the land after expiry of Bibi Paskazia in the decision of the District Court in **Civil Appeal 123 of 1996**. On the question of Will which recognizes the Applicant, the Respondent contested the authenticity of the Will of Bibi Paskazia. This court after going through all decisions in the Primary Court, District Court and Tribunal, had invited the parties on 8<sup>th</sup> March 2021, to state on legal status of the decision of the District Court in **Civil Appeal 123**

**of 1996** and its holding in page 3 of the decision which shows that the Respondent shall take the house and land after demise of Bibi Paskazia

It was fortunate that learned counsel Mr. Ngotorwa did not protest the holding of the decision of the District Court in **Civil Appeal 123 of 1996**. However, Mr. Ngotorwa submitted that the land which the Applicant is seeking possession is not the one decided by the District Court in **Civil Appeal 123 of 1996**. On part of the Respondent, he reiterated the same position on how he got the land in dispute and argued that the Applicant's counsel admitted the facts and therefore no dispute on the rightful owner of the land. It is also fortunate that at the Primary Court in **Civil Case No. 11 of 1994**, several exhibits were admitted, including a sketch map of *locus in quo* attached in exhibit A which displays details of the lands in the location of Nyakashenye Hamlet within Muhutwe Village in Muleba Ward.

If there is any dispute as to whether the Respondent executed and occupied the same land or any other land, the procedure is not to file a fresh Application before the Tribunal which has similar mandate with the District Court, but rather to seek remedy through

the provision in Rule 69 and 70 of the **Magistrates' Courts (Civil Procedure in Primary Courts) Rules**, GN. No. 310 of 1964. As there is a breach of the law in filing fresh Applications before the Tribunal, this court has formed an opinion to set aside proceedings and quash any orders emanated in the two Applications in the Tribunal, *viz*: **Application No. 49 of 2019** and **Misc. Application No. 108 of 2019** to conform with directives of our superior court in ensuring proper application of the law and straight record of courts below (see: **Diamond Trust Bank Tanzania Bank Ltd v. Idrisa Shehe Mohamed**, Civil Appeal No. 262 of 2017). The reason of wanting straight record is found in the Court of Appeal precedent that: *the court of record must take appropriate measures to put the matter and the record right* (see: **Principal Secretary, Ministry of Defence & National Service v. Devram Valambhia** [1992] TLR 185).

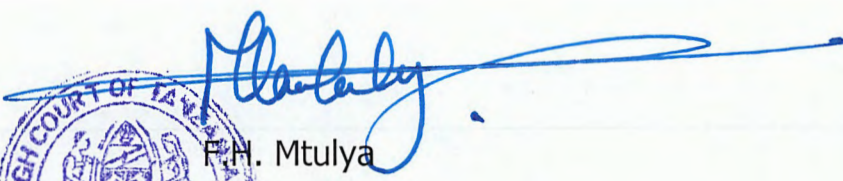

The present Revision will not end without touching two important matters, namely: distinct ways in acquisition of the land and silence on part of the Applicant with regard to the detailed description of the land in dispute lodged in **Application No. 29 of 2019** in the Tribunal, Mr. Ngotorwa on 22<sup>nd</sup> February 2021, when he was invited to state on acquisition of the land by the Applicant, he

stated that the Applicant acquired the land by Will drafted by Bi. Paskazia whereas the Application shows the Applicant acquired the land by gift from the same Bi. Paskazia. With location and size, the Appellant provided general statement in paragraph 3 of the Application Form that the land is located at Nyakashenya Village Muhutwe Ward within Muleba District. This is contrary to the law in Regulation 3 (2) (b) of the **Land Disputes Courts (The District Land and Housing Tribunal) Regulations**, 2003 GN. No. 174 of 2003 (the Regulations) and precedents of this court in **Daniel D. Kaluga v. Masaka Ibeho & Four Others**, Land Appeal No. 26 of 2015; **Rev. Francis Paul v. Bukoba Municipal Director & 17 Others**, Land Case No. 7 of 2014; **Aron Bimbona v. Alex Kamihanda**, Misc. Land Case Appeal No. 63 of 2018; **Ponsian Kadagu v. Muganyizi Samwel**, Misc. Land Case Appeal No. 41 of 2018; and **Simeo Rushuku Kabale v. Athonia Simeo Kabale**, Civil Appeal No. 6 of 2019).

Considering the errors in this Application and regarding the interest of justice, I have formed an opinion to set aside proceedings and quash decisions of the Tribunal in all two (2) Applications *viz*: **Application No. 49 of 2019** and **Misc. Application No. 108 of 2019**. I order no costs in this Application. Each party shall bear its own

costs. The reason is straight forward. The irregularities were not caused by the parties. It was the Tribunal sitting at Muleba entertaining the Applications without abiding by the law both in statutes and precedents.

It is so ordered.

  
  
F.H. Mtulya  
**Judge**

12.03.2021

This Ruling was delivered in chambers under the seal of this court in presence of the Applicant, Mr. Estone Elieza and in presence of the Respondent, Mr. Nason Rugemalira.

  
  
F.H. Mtulya  
**Judge**

12.03.2021